

Review Essay—Bilingual Legal Education in the United States: An Idea Whose Time Has Come?

Xabier Arzoz (ed.), *Bilingual Higher Education in the Legal Context: Group Rights, State Policies and Globalisation*, Boston and Leiden: Martinus Nijhoff Publishers, 2012, pp. 362, \$144.

Katia Fach Gómez, *El Derecho en Español: Terminología y Habilidades Jurídicas para un Ejercicio Legal Exitoso*, Austin: University of Texas Press, 2014, pp. 155, \$29.95.

Reviewed by S.I. Strong

The long-standing and close connection among law, language and the state has traditionally led law schools to provide legal education in a single language. Indeed, bilingual legal education could in some cases be viewed as potentially contrary to state interests, given that “[t]he main instrument of nation-building is the imposition of a common state language.”¹

However, the historical model of monolingual legal education may be in jeopardy. For example, a variety of international organizations, including the United Nations and the European Centre for Higher Education (UNESCO-CEPES), the Organisation for Economic Co-operation and Development (OECD) and the World Trade Organization (WTO), have all remarked upon the need to increase the number of bilingual lawyers in the world.² Scholars

S.I. Strong is Associate Professor of Law at the University of Missouri and Senior Fellow at the Center for the Study of Dispute Resolution. Ph.D. (law), University of Cambridge; D.Phil., University of Oxford; J.D., Duke University; M.P.W., University of Southern California; B.A., University of California, Davis. The author, who is admitted to practice as an attorney in New York and Illinois and as a solicitor in England and Wales.

1. Xabier Arzoz, *Legal Education in Bilingual Contexts: A Conceptual, Historical and Comparative Introduction*, in *BILINGUAL HIGHER EDUCATION IN THE LEGAL CONTEXT: GROUP RIGHTS, STATE POLICIES AND GLOBALISATION* 3, 10-11 (Xabier Arzoz ed., 2012) [hereinafter *BILINGUAL HIGHER EDUCATION*].
2. See *id.* at 4; Alba Nogueira López, *Living on Borrowed Time: Bilingual Law Teaching in Galicia or the Urgent Need to Recover Prestige*, in *BILINGUAL HIGHER EDUCATION*, *supra* note 1, at 193, 208; see also *LANGUAGE POLICIES IN HIGHER EDUCATION: AN INVITATION TO A DEBATE* (Sjur Bergan ed., 2002) (discussing a Council of Europe roundtable on language policies in higher education).

have also suggested that “[i]n a globalising world, the role and importance of multilingual higher education institutions will [only] increase.”³

Recent years have seen a growing number of jurisdictions embracing bilingual or even multilingual legal education, although the underlying rationales vary from country to country. For example, some jurisdictions turn to bilingual education to make their universities and/or law graduates more competitive in a global market.⁴ Other countries offer courses in multiple languages in order to be more responsive to the demands of their citizenry and avoid potential violations of civil, political or human rights, including the right of access to justice.⁵

Some U.S. law schools have also experimented with bilingual legal education.⁶ However, the lack of discussion, let alone consensus, about what constitutes best practices in this field strongly suggests that U.S. law schools need to think seriously and comprehensively about the goals and pedagogies associated with bilingual legal education.

This review essay considers these issues in the context of two recently published books. *Bilingual Higher Education in the Legal Context*, edited by Xabier Arzoz, is perhaps the first book to consider language policy from the perspective of legal education and provides useful insights into how bilingual legal education can and should be structured, even in countries (such as the United States) that consider themselves monolingual.⁷ *El Derecho En Español*, by Katia Fach Gómez, is among the new wave of texts designed to teach U.S. law students how to capitalize on their existing foreign-language skills

3. Arzoz, *supra* note 1, at 23.

4. *See id.* at 23, 25.

5. *See id.*; Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 1029 (2008); Paul Conor Hale, *Official, National, Common or Unifying: Do Words Giving Legal Status to Language Diminish Linguistic Human Rights?* 36 GA. J. INT'L & COMP. L. 221, 235 (2007); Jasmine B. Gonzales Rose, *Language Disenfranchisement in Juries: A Call for Constitutional Remediation*, 65 HASTINGS L.J. 811, 813 (2014).

6. A number of law schools have courses in foreign languages, although these schools are still in the minority. Spanish appears to be the most popular offering, with Boston University, Hofstra University, Florida State University, Northwestern University, Pepperdine University, Stanford University, University of Alabama, the University of Denver, the University of New Mexico, the University of Pittsburgh, the University of Texas, the University of Utah and William & Mary among the various law schools offering “Spanish for Lawyers.” Post-graduate instruction in legal Spanish is also available, either from law schools (such as Seattle University School of Law) or various bar associations (such as the Dallas Bar Association and the Colorado Bar Association). Other languages are also taught in law schools, though less frequently. For example, the University of Pittsburgh offers “German for Lawyers,” while Northwestern University and the University of Pittsburgh both offer “French for Lawyers.” Instruction in non-European languages is also sometimes available, with Stanford University, the University of Chicago and the University of Pittsburgh all offering “Chinese for Lawyers.”

7. *See* Arzoz, *supra* note 1, at 7; *see also infra* notes 9-10 and accompanying text.

and provides helpful practical tips on how bilingual legal education can be structured.⁸

I. The Need for U.S. Lawyers With Foreign Language Skills

The first thing to consider in the context of this discussion is whether and to what extent U.S. law students and lawyers need to become capable of providing legal advice and analysis in a second language. This conversation must, of course, be set within the ongoing debate about whether the United States is, or should be, a monolingual nation.

At this point, twenty-seven U.S. states have declared English to be their official state language.⁹ Although there is no law or policy indicating that English is the official language of the federal government, English is nevertheless the language used by U.S. federal courts.¹⁰ The propriety of these practices have been questioned by a number of commentators who believe that English-only policies affect various sorts of civil, political and human rights.¹¹

This is not the time or the place to discuss the political or constitutional issues surrounding English-only provisions.¹² However, contemporary legislative and judicial practices in the United States have doubtless contributed to the conclusion by U.S. law schools that English should be the language of instruction. While no one would dispute that English should be the primary language of instruction in U.S. law schools, the failure of the U.S. legal academy to consider issues relating to secondary instruction in other languages fails to take into account the significant and potentially growing number of U.S. citizens, residents and visitors who have limited proficiency in English.¹³ As various commentators have recognized, the shortage of U.S. lawyers with foreign-language skills increases the risk that certain segments of society will be unable to obtain useful legal advice and assistance. Shortcomings in law schools' foreign-language offerings have also injured U.S. law students' ability to function in a globalized world.¹⁴ At this point, the United States prides

8. See KATIA FACH GÓMEZ, *EL DERECHO EN ESPAÑOL: TERMINOLOGÍA Y HABILIDADES JURÍDICAS PARA UN EJERCICIO LEGAL EXITOSO* (2014).

9. See Samuel W. Crowe, Note, *Comparatively Speaking—Language Rights in the United States and Canada*, 37 CAN.-U.S. L.J. 207, 217-18 (2012).

10. There have been numerous failed efforts, however, to make English the official language of the United States. See Rose, *supra* note 5, at 816.

11. See Arzoz, *supra* note 1, at 24-26; Hale, *supra* note 5, at 235; Rose, *supra* note 5, at 816-17.

12. The United States Supreme Court has dodged questions about the constitutionality of English-only provisions on several occasions. See, e.g., *Alexander v. Sandoval*, 532 U.S. 275, 279 (2001) (focusing on whether a private right of action existed); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 79-80 (1997) (focusing on standing and abstention issues).

13. See Rose, *supra* note 5, at 822-24.

14. This issue is obviously of importance to the U.S. legal academy, given that the theme for the 2013 American Association of Law Schools annual conference was "Global Engagement and the Legal Academy." See The Association of American Law Schools, 2013 Annual Meeting Theme, <https://memberaccess.aals.org/eweb//DynamicPage>.

itself on being a leader in both international diplomacy and international commerce. However, the existing law school curriculum is not providing young lawyers with the tools they need to succeed in either field.

Attempts to globalize the law school curriculum have focused primarily on matters of substantive law. Emphasis has traditionally been placed on courses relating to public international law, which deals with state-to-state issues. However, career opportunities in public international law are highly competitive and relatively stable. Instead, the area that has seen the most growth as a result of globalization is private international law, which involves matters relating to private individuals and companies.¹⁵

Substantive law is, of course, a critical component of a student's legal education. However, the legal academy has recently come to recognize that skills training is equally important.¹⁶ This shift in emphasis is critical, since the only way to prepare U.S. lawyers to provide legal advice within the United States to clients with limited proficiency in English or to work in either international diplomacy¹⁷ or international commerce¹⁸ is to teach U.S. law students how to read, analyze and discuss legal concepts in a second language.

aspx?webcode=2013amwhy&Reg_evt_key=a931e6c6-e043-4c5d-9af6-491599393238&RegPat h=EventRegFees.

15. The field of private international law is rapidly changing to take contemporary developments into account. See Charles T. Kotuby, *General Principles of Law, International Due Process, and the Modern Role of Private International Law*, 23 DUKE J. COMP. & INT'L L. 411, 411-12 (2013); Alex Mills, *The Identities of Private International Law: Lessons From the U.S. and EU Revolutions*, 23 DUKE J. COMP. & INT'L L. 445, 446-48 (2013). Private international law encompasses a variety of subject matter areas, such as international family law (which includes intercountry adoption and intercountry marriage and divorce), international commercial law (which includes international transactions, international commercial arbitration and transnational litigation) and international products liability law. See HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, http://www.hcch.net/index_en.php (last visited July 1, 2014) (outlining fields in which it has been active).
16. See TASK FORCE ON THE FUTURE OF LEGAL EDUC., A.B.A., REPORT AND RECOMMENDATIONS (January, 2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf; see also SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report.authcheckdam.pdf.
17. The failure to teach U.S. law students how to undertake legal analyses in other languages could be problematic for U.S. interests, since lawyers at the U.S. Department of State need to be able to read, comprehend and negotiate legal texts in other languages. Furthermore, individual lawyers who have conversational, but not legal, fluency in a second language may find it difficult to find employment at an international organization such as the United Nations, since those positions often require advanced language skills.
18. Although English is considered the lingua franca of international commercial practice, employers still look for foreign-language skills. See Anne Marie Slaughter, *The International Dimension of Law School Curriculum*, 22 PENN STATE INT'L L. REV. 417, 417-18 (2004).

Some people believe that conversational fluency, supplemented by a good bilingual legal dictionary, is all that is needed to provide legal advice across linguistic barriers.¹⁹ In fact, nothing could be more dangerous.²⁰ Law is intimately bound up in a particular cultural and legal context, and bilingual lawyers must do more than simply acquire a specialized vocabulary. Instead, a lawyer functioning in a foreign language must be able to understand how certain concepts are interpreted and applied within a foreign legal system or by a client with limited English proficiency. Therefore, specialized coursework concerning bilingual lawyering is necessary if U.S. law students are to learn how to practice in multiple languages.

II. Lessons From Abroad

As the United States considers incorporating language skills into its law school curriculum, educators and policy makers can and should seek to benefit from the experiences of other nations.²¹ There are numerous ways to approach multilingual legal education, and the United States needs to adopt a system that is tailored to U.S. legal, historical and cultural norms.²²

Bilingual Higher Education in the Legal Context discusses a number of different educational models that individual U.S. law schools may want to consider.²³ Several essays consider bilingual legal education from the perspective of the Bologna Process, which is a pan-European initiative by various European organizations and educational stakeholders to improve and facilitate higher education within Europe.²⁴ Although the Bologna Process originally focused on European interests, the scope of the project has since expanded to include an external feature meant to make European law faculties more competitive in

19. Particularly disturbing are books or pamphlets that attempt to provide lawyers or paralegals with standardized phrases similar to those seen in short travel guides. See, e.g., WILLIAM HARVEY, *SPANISH FOR ATTORNEYS AND PARALEGALS* (2009); QUICKSTUDY ACADEMIC, *SPANISH LEGAL CONVERSATION* (2009).

20. See Vivian Grosswald Curran, *Cultural Immersion, Difference and Categories in U.S. Comparative Law*, 46 AM. J. COMP. L. 43 (1998); Vivian Grosswald Curran, *Developing and Teaching a Foreign-Language Course for Law Students*, 43 J. LEGAL EDUC. 598 (1993); Peer Zumbansen, *What Lies Before, Behind and Beneath a Case? Five Minutes on Transnational Lawyering and the Consequences for Legal Education* (Osgoode CPLE Research Paper No. 62/2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2370428.

21. See Arzoz, *supra* note 1, at 5-7.

22. See *id.* at 7-10.

23. See *id.*

24. See Xabier Arzoz, *Basque-Medium Legal Education in the Basque Country*, in BILINGUAL HIGHER EDUCATION, *supra* note 1, at 135, 162-163 [hereinafter Arzoz, *Basque-Medium*]; Sophie Weerts, *Linguistic Law in Higher Education in Belgium: New Trends for Bilingual Education, But Which One?*, in BILINGUAL HIGHER EDUCATION, *supra* note 1, at 51, 66, 74. The Bologna Process enjoys a great deal of institutional and participant support. See *About the Bologna Process*, BOLOGNA PROCESS, <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/about/> (last visited July 1, 2014) (noting the involvement of the European Commission, the Council of Europe and UNESCO-CEPES, as well as a number of stakeholders in higher education).

the global market and to serve the needs of law students and lawyers who wish to practice internationally.²⁵

The groundbreaking nature of the Bologna Process has inspired U.S. academics to consider various improvements to U.S. higher education, particularly with respect to language issues.²⁶ However, many of these domestic discussions have not focused on legal education,²⁷ which makes the suggestions found in *Bilingual Higher Education in the Legal Context* all the more helpful.

One of the key features discussed in *Bilingual Higher Education in the Legal Context* involves the number of continental European universities now offering legal education in English.²⁸ The book provides two rationales for this phenomenon. First, English is a major international language, and European universities believe that providing students with some coursework in English facilitates students' ability to practice law in English after graduation. Second, English is sufficiently well-known around the world that it allows students from several different countries to attend the same classes.

Some readers might look at the English-instruction efforts of European law faculties as evidence that English is currently operating as an international lingua franca, which would subsequently suggest that there is little need for bilingual legal education in the United States. However, closer analysis of international legal practice indicates that lawyers working in certain regions often need to know languages other than English.²⁹ Furthermore, U.S. law schools still need to address problems associated with domestic clients who have limited English proficiency.³⁰

Thus, the Bologna Process can and perhaps should best be viewed as suggesting an increasing need for bilingual lawyers, not just English-speaking lawyers. Indeed, the essays in *Bilingual Higher Education in the Legal Context* strongly support this conclusion, since the various authors stress that bilingual lawyers

25. See *European Higher Education in a Global Setting: A Strategy for the External Dimension of the Bologna Process*, BOLOGNA PROCESS, <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/documents/WGR2007/Strategy-for-EHEA-in-global-setting.pdf> (last visited July 1, 2014).

26. See CLIFF ADELMAN, *THE BOLOGNA PROCESS FOR U.S. EYES: RE-LEARNING HIGHER EDUCATION IN THE AGE OF CONVERGENCE* 177-81 (2009), available at <http://www.ihep.org/assets/files/EYESFINAL.pdf>.

27. A few commentators have considered how the Bologna Process affects legal education in the United States. See Laurel S. Terry, *The Bologna Process and its Implications for U.S. Legal Education*, 57 J. LEGAL EDUC. 237 (2007); see also Larry Catá Becker, *Internationalizing the American Law School Curriculum (In Light of the Carnegie Foundation's Report)*, 2 IUS GENTIUM 49, 103-04 (2008); David S. Clark, *American Law Schools in the Age of Globalization: A Comparative Perspective*, 61 RUTGERS L. REV. 1037, 1063-68 (2009).

28. See Nichole Kornet, *English-Medium Legal Education in Continental Europe: Maastricht University's European Law School: Experiences and Challenges*, in *BILINGUAL HIGHER EDUCATION*, *supra* note 1, at 313, 323-39; Weerts, *supra* note 25, at 66.

29. See ADELMAN, *supra* note 27, at 178.

30. See Arzoz, *supra* note 1, at 25.

are needed not only to engage in international diplomacy and commerce (where English might indeed be the standard means of communication), but also to address the needs of linguistic minorities within a particular jurisdiction's national borders.³¹

Bilingual Higher Education in the Legal Context discusses more than policy issues. Instead, the book also considers the various practical problems associated with delivering legal education on a bilingual or multilingual basis.³² According to the authors, one of the key difficulties in this field relates to the ability to find qualified, experienced teaching staff, a situation that might also arise in the United States.³³ Another issue involves the possibility that teaching and publishing in a secondary language may be of somewhat lower prestige than teaching and publishing in the dominant language.³⁴ This matter could play out in the United States with respect to the status of foreign language instructors (i.e., whether they should be considered as adjunct, clinical or tenure-track professors).

Perhaps the most important concern identified in *Bilingual Higher Education in the Legal Context* involves "the low level of textbook production, commentaries and treatises" in various countries' non-dominant language.³⁵ The scarcity of teaching materials often requires instructors to "produce from scratch their own rudimentary teaching materials,"³⁶ typically without any institutional support or assistance from more senior colleagues. This phenomenon means not only that bilingual instructors have to work twice as hard as instructors in the dominant language, but that it is extremely difficult to implement national standards regarding the content and quality of bilingual lawyering courses.³⁷

III. Overcoming the Resources Shortage in Bilingual Legal Education

Bilingual Higher Education in the Legal Context considers shortages in teaching materials and resources to be perhaps the biggest obstacle to bilingual legal education. However, this problem may be in the process of being resolved in the United States, at least with respect to some of the more popular foreign languages.

31. See *id.* at 24-25; López, *supra* note 2, at 210-12.

32. See Bethan Sarah Davies, *Bilingual Education in Europe and Canada*, in BILINGUAL HIGHER EDUCATION, *supra* note 1, at 343, 344-52.

33. See Arzoz, *Basque-Medium*, *supra* note 25, at 148-49; Davies, *supra* note 33, at 347.

34. See Arzoz, *supra* note 1, at 32; Arzoz, *Basque-Medium*, *supra* note 25, at 148; R. Gwynedd Parry, *Bilingual Legal Scholarship in Wales: Historical and Contemporary Perspectives*, in BILINGUAL HIGHER EDUCATION, *supra* note 1, at 215, 239-40.

35. See Markku Suksi, *Implementing Linguistic Rights in Finland Through Legal Education in Finnish and Swedish*, in BILINGUAL HIGHER EDUCATION, *supra* note 1, at 101, 132.

36. Arzoz, *Basque-Medium*, *supra* note 25, at 149.

37. See Davies, *supra* note 33, at 344 (noting also the desirability of establishing a certification system for lawyers intending to practice bilingually).

The authors of *Bilingual Higher Education in the Legal Context* indicate that instructors of bilingual legal courses need two different types of materials: primary authorities (such as statutes and case law) and secondary authorities (such as textbooks).³⁸ Bilingual instructors in the United States should have few problems in finding primary materials in most major languages, although the references would typically discuss foreign law rather than U.S. law.³⁹

Textbooks can prove more difficult to find, although that may be changing, particularly with respect to Spanish, which appears to be the most popular foreign language taught in U.S. law schools.⁴⁰ One of the more notable recent publications in this field is *El Derecho en Español* by Katia Fach Gómez. Rather than following the standard casebook format, this title provides a series of exercises meant to provide progressive instruction in legal and linguistic concepts covering a variety of subject matter areas.⁴¹ This technique is particularly appropriate to language acquisition, since it allows students to gain a contextualized understanding of the various legal terms and concepts while also conveying key information about various Spanish-speaking jurisdictions.⁴²

The exercises vary according to the subject matter and include a number of self-tests that readers can use to evaluate their progress. Each chapter also includes a list of vocabulary words commonly associated with that particular area of law.

The book reflects a relatively straightforward structure. The text begins in Chapter 1 with basic background principles relating to the study and practice of law, which helps the reader acclimate to the use of legal Spanish before the discussion turns to various matters of substantive law. The substantive chapters reflect a good mix of international and domestic concerns, and include discussions of constitutional law (Chapter 2), contract law (Chapter 3), banking law (Chapter 4), criminal law (Chapter 5), family law (Chapter

38. See Arzoz, *Basque Medium*, 2, *supra* note 25, at 151.

39. Several online sources provide free access to primary authorities in the vernacular. See *Case Law on UNCITRAL Texts (CLOUT)*, UNCITRAL, http://www.uncitral.org/uncitral/en/case_law.html (last visited July 1, 2014); WORLD LEGAL INFORMATION INSTITUTE (July 2, 2014), <http://www.worldlii.org/>. Some countries also provide extensive online access to their domestic statutory and case law. See, e.g., JURISCOL, <http://juriscol.banrep.gov.co> (last visited July 1, 2014) (providing free online access to the Colombian constitution as well as statutes, regulations and judicial decisions). While U.S. law is occasionally translated into a foreign language, those materials are more difficult to find. But see *La Constitución de los Estados Unidos de América 1787*, NATIONAL ARCHIVES, available at <http://www.archives.gov/espanol/constitucion.html> (last visited July 1, 2014).

40. See *supra* note 6. Coursebooks in this field include VICTORIA ORTIZ, *ESPAÑOL PARA ABOGADOS* (2012); S.I. STRONG ET AL., *SPANISH-ENGLISH LEGAL TERMS AND PRACTICES/TÉRMINOS Y PRÁCTICAS LEGALES EN ESPAÑOL E INGLÉS* (forthcoming 2015).

41. See GÓMEZ, *supra* note 8, at xv.

42. See Catherine Valcke, *Global Law Teaching*, 54 J. LEGAL EDUC. 160, 177 (2004).

6), immigration law (Chapter 7), human rights (Chapter 8) and international arbitration and litigation (Chapter 9).

Chapter 10 brings together the various strands of discussion in a rather innovative way. Here, the author lists a number of movies from the United States, Spain and Latin America that deal with legal or quasi-legal subjects. Viewing the movies not only helps students work on their oral comprehension skills (since the movies use different regional idioms and dialects to discuss legal issues), but also provides the basis for further class discussion and analysis.

Conclusion

Numerous national and international authorities have recognized the increasing need for bilingual lawyers, and U.S. law schools need to take immediate and forceful steps to adopt foreign-language classes into their curriculum if the United States is to retain its status as a leader in international diplomacy and commerce while also providing adequate legal services to its residents. However, deciding to provide bilingual legal education is just the first step in this process. Legal educators must also identify how best to teach bilingual lawyering skills.

The two books considered in this review essay—*Bilingual Higher Education in the Legal Context* and *El Derecho En Español*—both provide important insights into the policy and practice of bilingual legal education. These texts would be helpful to both law schools and individual instructors seeking to identify “best practices” in training bilingual lawyers. In a time when law schools are looking for ways to make legal education more relevant to the real world, the concept of foreign-language education is certainly a subject that deserves close consideration.